IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 285 of 2003

Tukaram Ramchandra Chavan
and Ors. ... .. Appellants

V/s

Sakharam Ganapati Chavan
and Ors. ... ... Respondents

Ms Leena Patil i/b P.M.Pradhan for Appellants
Shri S.K.Chinchalkar for Respondents

CORAM:S.R.SATHE,J.

DATED:30th June 2005

P.C.:-

1. Both the learned Advocates submitted that though the matter is fixed for admission, they are ready to argue in detail and matter be decided finally at the admission stage. Hence heard both the learned Advocates.

2. Heard both the learned Advocates.

3. Appellant, original defendant in Regular Civil Suit

No.202 of 1977 has preferred the present Second Appeal against the judgment and order passed by the Court of 1st Ad Hoc Additional District Judge, Sangli whereby the decree passed by the trial Court restraining the defendant from obstructing plaintiff's possession of the suit property was confirmed and appeal was dismissed.

4. Plaintiffs filed suit for permanent injunction alleging that S.No.192/1 i.e. Gat No.925 admeasring 8 Acre 19 gunthas situated at village Malgaon, Taluka Miraj, District Sangli is purchased by plaintiff's father Ganpati on 24-9-1921. The defendants are having agricultural land bearing S.No.192/2 on the southern side of the plaintiff's land. Though the defendants were not having right, title and interest in respect of the suit property they obstructed the plaintiff's possession over the suit land and also tried to obstruct them from taking water from the well in their land and also obstructed the possession of temporary shed. Hence plaintiff filed the suit. The same was resisted by the defendants by filing written statement Exh.32. The defendants specifically contended that they and plaintiffs both are having half half in the well water. They also contended that entire Survey No.192/1 is not owned and possessed by the plaintiffs but plaintiffs are having ownership to the extent of 7 Acres 21 gunthas. According to them the plaintiffs made encroachment to the extent of 26 Ares in their

land. The defendants therefore filed counter claim and prayed that plaintiffs be directed to hand over possession of encroached portion.

5. Both the parties adduced oral and documentary evidence to support their claim.

6. From the perusal of the judgment of the trial Court it is very clear that the trial Court considered all the evidence from every angle and has came to the conclusion that the plaintiffs are in possession of the suit property and the defendants are not at all concerned with the same. The right as alleged by them in respect of the well was also not in respect of disputed well but it was in respect of some other well which is admittedly unused. The finding of fact recorded by the trial Court is confirmed by the first appellate court. There is nothing to indicate that appreciation of the evidence is perverse or that finding recorded is against the evidence. Even from the perusal of the appeal memo it is very clear that appellant has in fact not formulated any substantial question of law in the appeal memo. No question of law much less substantial question of law is involved in the present appeal.

7. Hence the appeal is dismissed.

(S.R.SATHE,J.)